

24 DEC 1986

MEMORANDUM FOR: Deputy Director for Legislation/OCA

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FROM:

[Redacted]
Executive Officer/OS

SUBJECT: Annual Report on Criminal History Record
Information

REFERENCE: Memorandum for DDA and D/S dtd 16 Dec 86;
Same Subject (OCA 86-4165)

1. In reference, you requested information regarding the effect on CIA of the requirement contained in the FY 1986 Intelligence Authorization Act to pay fees to states and localities for criminal history record information. The Office of Security has not paid any such fees but the requirement to do so has had a small effect on our investigative process.

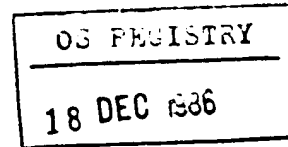
2. In every state except California, we have been able to maintain our liaison with either local or central criminal record repositories and have been afforded appropriate access without charge. In some states there may be a fee required for access to central information banks but we have not had occasion to use them as we find local checks (without charge) to suit our needs.

3. In California, the central index would be of some value as it is a fairly good one. We used it regularly without fee prior to the FY 1986 Act. However, California has chosen to charge \$18.50 for each inquiry; we feel this is too high a price. At the present time, we conduct appropriate local police checks in California which give us what we believe is adequate criminal record coverage; the local jurisdictions do not charge for the inquiries. However, we are continuing to monitor the situation to be sure that we are getting the coverage we need and that the cost of local checks (some must be done in person by an investigator) remains lower than doing the central checks.

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[Redacted]

cc: EXA/DDA



16 December 1986
OCA 86-4165

MEMORANDUM FOR: Deputy Director for Administration
Director of Security

FROM: [redacted]
Deputy Director for Legislation
Office of Congressional Affairs

SUBJECT: Annual Report on Criminal History Record
Information

The first annual report on the effect on CIA of the requirement to pay fees to states and localities in conjunction with requests for criminal history record information is due to the House and Senate Intelligence Committees on 1 January 1987. This was levied by the Conference Report to the FY 1986 Intelligence Authorization Act (excerpt attached). As of this date the report has not arrived in the OCA Registry for transmittal to the two Committees. I would appreciate it if you would have someone in your component contact [redacted] in my office [redacted] on the status of the report.

Attachment:
as noted

Distribution:

- Orig. - DDA
- 1 - D/OS
- 1 - ADGC/AL&MS
- 1 - OCA Registry
- 1 - OCA/LEG Subject File: Administrative Matters

by law, incurred in such operations, if use of appropriated funds to meet such expenses would not be practicable.

(b) As soon as the net proceeds from such counterintelligence operations are no longer necessary for the conduct of those operations, such proceeds shall be deposited into the Treasury as miscellaneous receipts.

(c) The Secretary of Defense shall establish policies and procedures to govern acquisition, use, management and disposition of proceeds from counterintelligence operations conducted by components of the Military Departments, including effective internal systems of accounting and administrative controls.

RETIREMENT BENEFITS FOR CERTAIN CENTRAL INTELLIGENCE AGENCY EMPLOYEES SERVING IN UNHEALTHFUL AREAS

SEC. 702. Section 251 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (50 U.S.C. 408 note) is amended by inserting "(a)" after "SEC. 251." and by adding at the end thereof the following new subsection:

"(b) The Director of Central Intelligence may from time to time establish, in consultation with the Secretary of State, a list of places outside the United States which by reason of climatic or other extreme conditions are to be classed as unhealthful posts. Each year of duty at such posts, inclusive of regular leaves of absence, shall be counted as one and a half years in computing the length of service of a participant under this Act for the purpose of retirement, fractional months being considered as full months in computing such service. No extra credit for service at such unhealthful posts shall be credited to any participant who is paid a differential under section 5925 or 5928 of title 5, United States Code, for such service."

TITLE VIII—ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY PURPOSES

SEC. 801. (a) Part III of Title 5, United States Code, is amended by adding after chapter 89 the following new subpart:

"Subpart H—Access to Criminal History Record Information

"CHAPTER 91—ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY PURPOSES

"Sec.

"9101. Criminal history record information for national security purposes.

"§ 9101. Criminal history record information for national security purposes

"(a) As used in this section:

"(1) The term 'criminal justice agency' includes Federal, State, and local agencies and means: (A) courts, or (B) a Government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or Executive

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INTELLIGENCE AGENCY AREAS

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order, and which allocates a substantial part of its annual budget to the administration of criminal justice.

"(2) The term 'criminal history record information' means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.

"(3) The term 'classified information' means information or material designated pursuant to the provisions of a statute or Executive order as requiring protection against unauthorized disclosure for reasons of national security.

"(4) the term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of Pacific Islands, and any other territory or possession of the United States.

"(5) The term 'local' and 'locality' means any local government authority or agency or component thereof within a State having jurisdiction over matters at a county, municipal or other local government level.

"(b)(1) Upon request by the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency, criminal justice agencies shall make available criminal history record information regarding individuals under investigation by such department, office or agency for the purpose of determining eligibility for (A) access to classified information or (B) assignment to or retention in sensitive national security duties. Such a request to a State central criminal history record repository shall be accompanied by the fingerprints of the individual who is the subject of the request if required by State law and if the repository uses the fingerprints in an automated fingerprint identification system. Fees, if any, charged for providing criminal history record information pursuant to this subsection shall not exceed the reasonable cost of providing such information, nor shall they in any event exceed those charged to State or local agencies other than criminal justice agencies for such information.

"(2) This subsection shall apply notwithstanding any other provision of law or regulation of any State or of any locality within a State, or any other law of the United States.

"(3)(A) Upon request by a State or locality, the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency shall enter into an agreement with such State or locality to indemnify and hold harmless such State or locality, and its officers, employees and agents, from any claim against such State or locality, or its officer, employee or agent, for damages, costs and other monetary loss, whether or not suit is instituted, arising from the disclosure or use by such department, office or agency of crimi-

nal history record information obtained from the State or locality pursuant to this subsection, if the laws of such State or locality, as of the date of enactment of this section, otherwise have the effect of prohibiting the disclosure of such criminal history record information to such department, office, or agency.

"(B) When the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency and a State or locality have entered into an agreement described in subparagraph (A), and a claim described in such subparagraph is made against such State or locality, or its officer, employee, or agent, the State or locality shall expeditiously transmit notice of such claim to the Attorney General and to the United States Attorney of the district embracing the place wherein the claim is made, and the United States shall have the opportunity to make all determinations regarding the settlement or defense of such claim.

"(c) The Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency shall not obtain criminal history record information pursuant to this section unless it has received written consent from the individual under investigation for the release of such information for the purposes set forth in paragraph (b)(1).

"(d) Criminal history record information received under this section shall be disclosed or used only for the purposes set forth in paragraph (b)(1) or for national security or criminal justice purposes authorized by law, and such information shall be made available to the individual who is the subject of such information upon request."

(b) The table of contents of Part III of title 5, United States Code is amended by adding at the end thereof:

"Subpart G—Access to Criminal History Record Information

"91. Access to Criminal History Record Information for National Security Purposes..... 9101"

SEC. 802. The amendments made by Section 801(a) of this Act shall become effective with respect to any inquiry which begins after the date of enactment of this Act conducted by the Department of Defense, the Office of Personnel Management, or the Central Intelligence Agency, for the purposes specified in paragraph (b)(1) of section 9101 of title 5, United States Code, as added by this Act.

SEC. 803. (a) Within two years after the date of enactment of this Act, the Department of Justice, after consultation with the Department of Defense, the Office of Personnel Management, and the Central Intelligence Agency, shall report to the appropriate committees of the Congress concerning the effect of Section 9101(b)(3) of title 5, United States Code, as added by this Act, including the effect of the absence of indemnification agreements upon States and localities not eligible under Section 9101(b)(3) of title 5, United States Code, for such agreements.

(b) Three years after the date of enactment of this Act, Section 9101(b)(3) of title 5, United States Code, shall expire.

2419 to DOD intelligence components and to the CIA which are available for investigations for determining eligibility for access to classified information or for assignment to or retention in sensitive national security duties will be available for the payment of fees levied by States or localities for access to criminal history record information. The conferees are agreed that DOD, OPM, and CIA resources should be adjusted appropriately by the Congress in the future to provide the necessary funds from which such fees may be paid. The conferees request that DOD, OPM, and CIA report annually to the appropriate committees of Congress on their experience with respect to fees for access to criminal history record information under Section 9101.

Paragraph 9101(b)(2) provides that subsection 9101(b) applies notwithstanding any laws or regulations of States and localities and notwithstanding any other federal laws. Thus, subsection 9101(b) preempts any conflicting State or local laws and supersedes any inconsistent federal laws. It does not, of course, affect complementary federal statutes which do not conflict with subsection 9101(b), such as Section 520a of title 10, United States Code.

Paragraph 9101(b)(3) provides that upon request by a State or locality, DOD, OPM, or CIA shall enter into an agreement to indemnify and hold harmless such State or locality, and its officers, employees, and agents, from any claim based on disclosure or use by DOD, OPM, or CIA of criminal history record information obtained from the State or locality, if, upon the date of enactment of the legislation, State or local law has the effect of prohibiting disclosure of such information to DOD, OPM or CIA. The scope of indemnification includes damages, costs and other monetary loss, whether or not suit is instituted. The conferees expect DOD, OPM, and CIA to consult with each other and with the Department of Justice ensure that indemnification agreements into which DOD, OPM, and CIA enter under the authority of Section 9101 properly protect the interests of the United States.

The conferees expect the indemnification provision to be a one-time-only exception to the general policy against indemnification. In this legislation, because of the unique combination of national security concerns, issues of states rights, and a need to respect the privacy rights of Americans, the conferees concluded that this exception is appropriate. The conferees emphasize that, not only is the federal government forcing states to disclose criminal history record information, but also a State must make disclosure to the federal government even when the State's law, because of a legitimate concern for the accuracy of the underlying records and privacy of its citizens, directly prohibits the disclosure. But for this legislation, such a State would not be exposed to any liability.

While agreeing to the indemnification provision because of the special circumstances noted, the conferees are very concerned that it not unduly burden the federal government or otherwise generate unintended consequences. Therefore, the conferees have added subsection 803(b) to H.R. 2419, a three year sunset provision applicable only to Section 9101(b)(3), relating to indemnification. At the end of the three-year period, or sooner, the Congress will have the opportunity to decide whether to retain the existing indemnification pro-

99TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
99-378

INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1986

NOVEMBER 14, 1985.—Ordered to be printed

Mr. HAMILTON, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 2419]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2419) to authorize appropriations for fiscal year 1986 for the intelligence and intelligence-related activities of the United States Government, for the Intelligence Community Staff, for the Central Intelligence Agency Retirement and Disability System, and for other purposes, having met, after full and free conference, having agreed to so recommend, do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act may be cited as the "Intelligence Authorization Act for Fiscal Year 1986".

TITLE I—INTELLIGENCE ACTIVITIES

AUTHORIZATION OF APPROPRIATIONS

SEC. 101. *Funds are hereby authorized to be appropriated for fiscal year 1986 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:*

- (1) *The Central Intelligence Agency.*
- (2) *The Department of Defense.*
- (3) *The Defense Intelligence Agency.*
- (4) *The National Security Agency.*

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